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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,390	11/30/2001	Stephen D. Pacetti	50623.00 62	5559

7590 08/24/2005

Squire, Sanders & Dempsey L.L.P.,
One Maritime Plaza, Suite 300
San Francisco, CA 94111

EXAMINER

HO, UYEN T

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/997,390	Applicant(s) PACETTI, STEPHEN D.	
	Examiner (Jackie) Tan-Uyen T. Ho	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2005.
 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
 4a) Of the above claim(s) 9-19 and 29-33 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-8, 20-28 and 34-46 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I (claims 1-8, 20-22) in the reply filed on 6/3/05 is acknowledged. The following is the summary of the election/restrictions for this application:

- Election/Restrictions mailed on 12/10/03

Group Invention I: Method of forming a coating on a stent

Group Invention II: A system for applying a coating on a stent

Group Invention III: An implantable device

Applicant elected on 1/2/04: Group Invention I (claims 1-8) and without traverse

- Election/Restrictions mailed on 7/13/04:

Instead of Group I and II, the Election/Restrictions being rewritten as follow:

Species I: Forming a coating with two ingredients

Species II: Forming a coating with three ingredients

Applicant elected on 7/23/04: Species I without traverse

- Election/Restrictions mailed on 4/4/05

Group I: a method including the step of modifying the ratio of the ingredients as the coating formulation being applied on the stent

Group II: a method do not including the step of modifying the ratio of the ingredients as the coating formulation being applied on the stent.

Applicant elected on 6/3/05: Group I

2. Applicants request reconsideration and rejoinder of claims 23-28 as well as to consider newly added claims 35-46 in Group I. Examiner agrees. Claims 1-8, 20-28, 34-46 are considered at this time.

The elected invention is: A method of forming a coating on a stent wherein modifying the ratio of the ingredients as the coating formulation is applied on the stent.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8, 20-28 and 34-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Berg et al. (5,464,650).

Berg et al. disclose a method for coating a stent comprising first, second and third ingredients wherein the first ingredient is drug or biologically active material, the second ingredient is polymer and third ingredient is solvent. The ingredients are applied to the stent by spraying or dipping. The different layers with different ratio result the formulation of the multi-layers coating with different ratio of drug and polymer.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

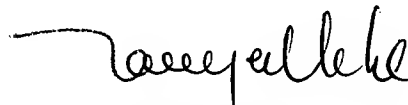
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-8, 20-28 and 34-46 are rejected under 35 U.S.C. 103(a) as obvious over Ding (5,980,972) in view of Berg et al. (5,464,650). Ding discloses all the limitation of the claims except for a present of modifying the ratio of the drug to the polymer. Berg et al. disclose that the release rate can be controlled by varying the ratio of drug to polymer (col. 2, lines 30-67). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to varying the ratio of drug to polymer in order to control the release rate of the drug. Doing so would meet all the limitations of the claims.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is 571-272-4696. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANHTUAN NGUYEN can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



(Jackie) Tan-Uyen T. Ho
Patent Examiner
Art Unit 3731

August 15, 2005